

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9262 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MUKESHBHAI RAJENDRABHAI SHAH : Petitioner.

Versus

ADDL DEVELOPMENT COMMISSIONER and 3 Others : Opponents.

Appearance:

MR. P..B. Majmudar, with N.K. Majmudar, Advocates
for Petitioner
Mr. M.A. Bukhari, AGP for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2
MR BS PATEL for Respondent No. 3
NOTICE SERVED BY DS on Respondent No. 4

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 16/08/1999

ORAL JUDGEMENT

The petitioner, by this application under Article 226 of the Constitution of India, calls in question the legality and validity of the order dated 3rd June 1997, passed by the District Development Officer, Baroda, removing him as the member of Chhani Gram Panchayat, and also the order dated 5th December 1997 passed by the Additional Development Commissioner in Appeal No. 28/97,

confirming the order of the District Development Officer.

2. Necessary facts, leading the petitioner to file this application, may, in brief, be stated. The petitioner was elected as the member of Chhani Gram Panchayat (hereinafter referred to as 'the Panchayat'). At a meeting held thereafter for the election of the Deputy Sarpanch, in accordance with Sec. 9(3)(c) of the Gujarat Panchayats Act 1993 (for short 'the Act') he succeeded in getting himself elected as the Upa-Sarpanch of the Panchayat, and since his such election he has been holding the office of Upa-Sarpanch for the last more than 2 years. By the passage of time, the District Development Officer (D.D.O.) the competent authority within the meaning of Sec. 57 of the Act came to know that petitioner was misusing his office, and always stepping out of line, he used to write the chits directing the Octroi Clerk to permit certain companies or persons to bring into the local limits of the Panchayat their goods without the payment of octroi duty or on payment of trifling duty under different devices. At times oral directions were also given. Once by a three-wheeler tempo goods were being taken into the village limits. The petitioner thus poked his nose into the levy of duty as a result, without levying the octroi duty the tempo with goods was permitted to enter into the Panchayat's limits. For such unjust indulgence development charges of Rs.500/- were collected. By such indulgence, the Gram Panchayat sustained a loss of huge amounts which otherwise the Panchayat would have earned levying octroi duty at the prevalent rates. On another occasion writing a chit the petitioner directed the Octroi Clerk to permit a motor vehicle loaded with iron-sheet. The Octroi Clerk had in turn permitted the vehicle to enter into the local limits of the Panchayat without payment of octroi duty. The petitioner, thus, caused titanic financial loss to the Panchayat. There is a company known as "Conwest Limited" within the local limits of the Panchayat. Showing 32 mis-leading receipts for which the petitioner had subtly contrived to show unjust favour, the company had brought the goods into the local limits of the Panchayat by paying only Rs. 400/= the development charges. It could not be ascertained of what amounts in fact the octroi duty was to be levied, but it appeared that the octroi duty was considerably & substantially higher than Rs. 400/-, the development charges collected from the company. The Panchayat on this occasion also sustained heavy loss of octroi duty. The Cargo Motors is also another business concern within the local limits of the Panchayat. Many times this company had also brought the goods within the local

limits of the Panchayat without the payment of octroi duty because of petitioner's overpowering the members of staff. When the company was asked to furnish the particulars about the goods brought into the local limits of the Panchayat, it came to the notice that owing to unjust favour from the petitioner, in all the goods to the tune of Rs. 1,68,00,000/= were brought into the local limits without payment of octroi duty. The D.D.O. having come to know about such malfeasanances asked the Sarpanch to recover the octroi duty. When the company was directed to pay the octroi duty of Rs. 4,20,000/= within the period of 7 days, the company vide its letter dated 22nd November 1995 replied disowning its liability. It was also known from the materials placed before the authority that Cargo Motors had brought the goods within the local limits of the Panchayat on 10th February 1996 and 11th February 1996, the value of which came to Rs. 17,55,526.40 ps. The octroi duty leviable on those goods was assessed at Rs. 35,110.50 ps. When Cargo Motors was, at the instance of the petitioner, illegally permitted to bring into the village limits the goods without levying octroi duty, the Panchayat sustained a loss of Rs. 35,110.50 ps. Not only that, but the Taluka Panchayat sustained the loss of 10% thereof and the District Panchayat sustained the loss of 15% thereof. By passage of time, the District Development Officer found that levy of octroi-duty was hole and corner affairs about which the petitioner had led the staff by the nose, and helpless staff was playing into his hands. On further inquiry in his own way the Dist. Development Officer also found that the petitioner had defrauded the Panchayat misusing his office, so as to have unjust enrichment. He had caused heavy financial loss to the Panchayat by artfully directing the overawed staff on octroi-side not to levy the octroi duty or to collect only the development charges of a meagre amount and permit the concerned persons or the companies to bring into the Panchayat's limits their goods. On such realization, the Dist. Development Officer issued a notice to show cause on 3rd April 1996. The petitioner on being served with the notice prayed for the copies of certain documents, but he was not clear in his application as to the copies of which of the documents he was praying for. As every thing was not specific, but evasive and unascertainable, he was informed on 29th September 1996 to be specific & precise about the documents but thereafter also he did not put forth his demand with specific details. He then appeared before the District Development Officer, the competent authority, but did not file any reply. He engaged an advocate to defend. The matter was then adjourned for

several times, and finally at the conclusion of the hearing the District Development Officer passed the order on 3rd June 1997 removing the petitioner as the Member of the Panchayat invoking his powers under Section 57 of the Act. Being aggrieved by such order, the petitioner preferred an Appeal No. 28/97 which came to be dismissed on 5th December 1997 by the Additional Development Commissioner, Gujarat State, Gandhinagar. It is against these two orders, the present application is filed calling in question the legality and validity of the orders removing him from the office of the Member of the Panchayat.

3. It is the contention of the petitioner that the allegations levelled against him are false. He was not aware about the incident of collection of Rs. 500/- as development charges. He never informed the Octroi Clerk to recover only Rs. 400/- by way of development charges and allow Conwest Limited to bring its goods into the local limits of the Panchayat. He had also never asked the Panchayat to accept the deposit of Rs.50,000/= from Cargo Motors Limited and permit that company to bring its goods without payment of octroi duty. He as alleged did no act prejudicial to the interest of the Gram Panchayat. The order passed by the District Development Officer, in no case, can be sustained as it suffers from several infirmities. The opportunity of being heard was not given. Without assigning any reason, much less sufficient, and appreciating the evidence before him, the District Development Officer passed the order. As contemplated by Section 57 of the Act, inquiry was also not held and hearing was not fixed. To mar his reputation, the respondents No. 3 & 4 were trying their best and it was also to secure their political goal. Virtually there is no evidence on record and without any evidence, when the orders are passed, the same are required to be quashed. Fresh inquiry may be ordered remanding the case to District Development Officer, etc.

4. In reply to such contentions, Mr. Bukhari, the learned A.G.P., for respondents No. 1 & 2 contends that the orders passed by the competent authorities are quite in consonance with law. There is no irregularity or illegality, but the petitioner who failed before the competent authority, and now losing a post which he considered to be a Hen laying golden eggs, tries to catch any thing available like a drowning man. He then urged me to dismiss the petition and also pass an exemplary order about which I will be dealing at a later stage.

5. Mr. Bharat Patel, the learned advocate for

respondents No. 3 & 4 adopting the arguments advanced by Mr. Bukhari, learned A.G.P., supports the impugned orders.

6. Mr. Majmudar, the learned advocate for the petitioner, in order to justify the request to remand the matter for a fresh inquiry has submitted that it is always open to this Court to inquire into the factual aspects of the case so as to impart real justice. The powers of High Court under Art. 226 of the Constitution are very wide without any barrier, or restrains. According to him, virtually here is the case of no evidence, and whatever little may be on record was not at all considered by the competent authority, namely the District Development Officer for his findings. When his order is perused it appears that he has scrawled, the evidence is not discussed and reasons are not assigned. If necessary this Court can evaluate the evidence and modify the order or pass another appropriate order. In that case, remanding the case for fresh inquiry will not be necessary.

7. It seems albeit the settled position of law, a verdict of the Court is again sought for, raising the issue about jurisdiction of the High Court. It may be stated that the jurisdiction of the High Court under Article 226 of the Constitution is supervisory in nature. The High Court does not sit or act as an Appellate Court over the action or order of subordinate authorities or Tribunal. To put in different words the powers under Article 226 are discretionary. The same are to be exercised subject to self-imposed limitation and not arbitrarily. The High Court can exercise writ jurisdiction only in cases where fundamental rights are violated, or enforcement of a legal right is necessary, or the authority has not acted in conformity with the principles of natural justice, or there is abridgement of procedure, or determination is on extraneous consideration, or the order is passed without jurisdiction or in bad faith, or a constitutional point is to be decided.

8. As submitted, the petitioner wants me to re-appreciate the evidence and determine the issues that arise for consideration which will not in view of the abovestated position of law fall within my scope of inquiry. This Court can examine the correctness of the decision making process, and not the correctness of the decision itself. The merits of the order are therefore not to be dissected, for the High Court has not to weigh the evidence on which the authority has acted with

nicety. The contention, therefore, gains no ground to stand upon. It may however be stated that the D.D.O. has in brief discussed the evidence and passed the order, while in appeal, Addl. Development Commissioner has at length and in details discussed the evidence and confirmed the order of D.D.O. assigning logical reasons. The appreciation of evidence being quite just & proper, the orders cannot be termed arbitrary or perverse.

9. Faced with such situation, the learned advocate for the petitioner, to be in tune with such law, submits that in the case on hand when opportunity of being heard was not given, rule of natural justice was violated, as a result of which the petitioner has to suffer serious injustice. When that is so, this Court may exercise the powers and upset the impugned orders. No doubt, this Court can interfere with the order of the authority if principles of natural justice are found to have been violated, but certainly not in the case where opportunity to submit is not availed of by the party because in that case rules of natural justice cannot be said to have been violated. Reading both the orders, it is clear that a notice, to show the cause as to why necessary action invoking Section 57 of the Act should not be taken, was served upon the petitioner. The petitioner thereafter applied for the copies of certain documents without being specific and confusing the authority. As the authority could not make out as to the copies of which documents were prayed for, the petitioner was informed to be specific and put-forth the demand afresh, but thereafter he did nothing and conveniently remained silent. Mr. Bukhari, ld. A.G.P. rightly submits that with a view to develop the case suitably in future the petitioner remained indistinct and subtle. On being intimated, he however appeared before the District Development Officer but repeating the same uncandidness, so as to exploit the situation later on, the petitioner did not file any written statement or objection in the proceedings initiated against him under Sec. 57 of the Act. As he had engaged the advocate to represent him, the matter was kept for effective hearing, but as no one appeared on behalf of the petitioner, the matter was adjourned from time to time. It is pertinent to note that the competent authority i.e., D.D.O. adjourned the matter to 29th October 1996, 11th November 1996, 12th December 1996, 19th December 1996, 30th December 1996, 13th January 1997, 27th February 1997, and 6th March 1997, but on no date either the petitioner or his advocate appeared and proceeded with the hearing. Thus, for about 8 times opportunity to submit was granted. Such a long-rope given cannot be said to be insufficient or unreasonable.

Unfortunately, it seems the petitioner did not avail of the opportunities granted. Here is therefore the case of non-availing of the opportunities granted, and not the case of bereft of opportunity. It is hence not open to the petitioner to contend that he is condemned unheard.

10. It is the next submission on behalf of the petitioner that the Advocate engaged for making submission before the competent authority, i.e. District Development Officer had gone to Haj pilgrimage and therefore he did not appear. The competent authority therefore ought to have waited till the Advocate returned and was in a position to appear, act, and plead. As the Advocate was not available, petitioner's right to defend was jeopardised. The contention, being fallacious, must fail. The authority or any Forum is not bound to wait till the party or his advocate is, as per his convenience, pleasure and leisure ready to proceed with the matter. The authority or the Forum may, in its discretion, having regard to the facts and circumstances of the case, grant time, or may pass the order otherwise, but certainly cannot foster the forces causing delay or delaying tactics, or procrastination, or mischief on the part of any party. He should not granting adjournments act as the lubricant to the device of the party trying to give a suitable shape to his case and baffle or frustrate his opposite party or benumb the proceedings, or action initiated against him. His duty is to see that within reasonable time the matter reaches its normal end. The party has, therefore, to be ready to appear and proceed with the matter on the date fixed assuming that no date will be granted. If it is not convenient to his advocate to proceed with the matter on the date fixed, it is for the party to manage to proceed with the matter either engaging another advocate or personally appearing & representing his case. If the time is not granted and for doing so discretion is rightly exercised, the party cannot be allowed to later on find fault with the authority, and he cannot be allowed to lament on any ground. In no case, therefore, it can be said that if the date is not granted, the party loses the right to defend or loses the opportunity to submit his say. In the case on hand, advocates' going out of India on pilgrimage for couple of months cannot be termed a just and good cause to grant time & wait till he returned. The petitioner could have made alternative arrangement soon after the date was granted on 29-10-96 the first day. He did not avail of the said chance not once but for 8 times. The contention, amounting to shedding crocodile tears, therefore cannot be accepted.

11. It is also the contention of the petitioner that inquiry as envisaged by Section 57 of the Act was not at all held though of course notice to show cause was given, and in view of the above stated fact, symbolic opportunity of being heard was given. Before I proceed, Section 57 of the Act may be quoted;

"57. (1). The competent authority may remove from office any member of the panchayat, the Sarpanch or, as the case may be, the Upa-Sarpanch thereof, after giving him an opportunity of being heard and giving due notice in that behalf to the panchayat and after such inquiry as it deems necessary, if such member, Sarpanch or, as the case may be, Upa-Sarpanch has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his powers or makes persistent default in the performance of his duties and functions under this Act or has become incapable of performing his duties and functions under this Act. The Sarpanch or, as the case may be, the Upa-Sarpanch, so removed may at the discretion of the competent authority also be removed from the membership of the panchayat.

(2) The competent authority may, after following the procedure laid down in sub-section (1) disqualify for a period not exceeding five years any person who has resigned his office as a member, Sarpanch or Upa-Sarpanch or otherwise ceased to hold any such office and has been guilty of misconduct specified in sub-section (1) or has been incapable of performing his duties and functions :

Provided that an action under this sub-section shall be taken within six months from the date on which the person resigns or ceases to hold any such office.

(3) Any person aggrieved by an order of the competent authority under sub-section (1) or (2) may, within a period of thirty days from the date of the communication of such order, appeal to the State Government."

Learned advocate for the petitioner lays much stress on the words "after such enquiry" appearing in the Section, and submits that over and above the notice and hearing,

inquiry is required to be held by the competent authority and then appropriate order is required to be passed, but in this case when the inquiry as per the Section is not held, the orders are bad in law and cannot be maintained. For holding inquiry & passing appropriate order the matter has to be remanded. The contention is misconceived. The dictionary meaning of the words "to inquire" is to "to exert oneself to discover something". "Inquiry is a road to truth" said Gladstone and therefore the meaning of the term "inquiry" is to ask, or to seek and search for knowledge, investigation of a question. In the case of Jamunabai Motilal vs. State of Maharashtra & Another AIR 1978 Bombay 200, the meaning of the word 'inquiry' is made clear, of course keeping in mind the provisions of Maharashtra Agricultural Lands (Ceiling of Holdings) Act, but it is a good guide for interpreting the words 'inquiry' appearing in Section 57 of the Act. It is made clear in the decision that the word 'inquiry' has a specific meaning and it is a process by which information is collected so as to determine the eventual entitlement of the person in the matters of his holding land. That process has distinctively the initiation by a notice followed by requisite hearing and the conclusion which will take the shape either of a decision or an order. Added to this are the provisions providing for appeal against the orders that conclude the inquiry. Hence, 'inquiry', in short, carries the meaning a process or a path to discover the truth which contemplates different stages right from initiation of the proceedings viz: filing of a petition, and/or issuance of the notice, filing written statement, hearing for collection of the evidence if at all necessary followed by hearing the arguments and lastly the conclusion which will take a shape of a decision or an order. When accordingly, the meaning of the word 'inquiry' can be spelt out, the act of giving the notice and granting the opportunity of being heard are not as submitted the stages foreign to the stages of the inquiry, but are the stages intrinsic or components of the inquiry. What has prompted Mr. Majmudar, learned advocate for the petitioner to contend as aforesaid is insequent use of the words in the aforesaid Section of the Act. In the said Section 57 of the Act, the word "inquiry" does not precede the words "notice" and "opportunity of being heard", but follows those words. It may be stated that the provision has to be construed reading the same as a whole and the construction must be logical and meaningful and not absurd, indiscriminate, or eeriery. One should not be swayed away with Legislature's permutation. The inquiry therefore cannot be described to be the process having the stages other

than the essential inherent stages of service of notice & hearing and the like. Hence requirements of issuance of notice and opportunity of being heard cannot in isolation be construed or assumed to be the pre-requisite formalities before the inquiry is held. In the case on hand, as stated hereinabove while mentioning the facts and discussing points raised, notice to show cause was given. Thereafter, an opportunity to file the written statement was also given and thereafter for 8 times the opportunities to submit were also given during the course of hearing but grant of such opportunities was not at all availed of, with the result the District Development Officer was constrained to proceed further in accordance with law and pass the order relating to which at this stage there is no controversy before this Court. When accordingly every formality has been undergone, it cannot be said that in the case on hand inquiry in accordance with law is not held. It is rightly submitted by Mr. Bukhari that when the petitioner is playing losing game in this case to avert the operation of impugned orders, his (petitioner's) preposterous contention finding fault with the authorities may be frowned upon. The contention therefore fails.

12. If a party engages the advocate and the advocate does not appear before the Court or a forum to act, plead and defend, what the party losing the opportunity to submit should do is the contention questioningly raised. The learned advocates for the opponents have rightly hinted to the Consumers Protection Act. After the Consumers Protection Act has come into force if the party engaging the advocate/lawyer does not get the services of his advocate owing to his unjust non-appearance; or if gets insufficient or defective services, may initiate complaint before competent Consumer Redressal Forum and claim damages/compensation and have the order establishing his case. The party is now not helpless, forlorn or confounded. It may be stated that the course to engage another advocate was also open to the petitioner which he did not resort to. In the case on hand, the abstinence of the advocate appearing unjust, request to remand the case on the ground that petitioner's right to represent was impaired also cannot be accepted.

13. The petitioner ought not to have been removed as the Member of the Panchayat the basic or primary office, i.e. firstly at the bottom when the act directing the Octroi Clerk not to levy octroi was referable to the office of Upa-Sarpanch. My attention is then drawn to the decision of this Court rendered in Akbarali Kasamali

Ravjani Vs. N.G. Pandya, District Development Officer 14 GLR 287 wherein it is laid down that if the act of misconduct done does not affect his status as a member, but relates to the duties to be performed as the Chairman of the Nagar Panchayat, removal of the wrong-doer as the member also cannot be justified, it will be bad in law. The contention having regards to the facts of the case is not acceptable. What happened in the case cited was that the petitioner of that case was the member and Chairman of the Nagar Panchayat Shihor. He was removed from his offices, both as a member and Chairman exercising powers u/s. 49 of the old Gujarat Panchayat Act 1962, (now Sec. 57 of the Act) because he did not reinstate in service Shri U.S. Desai the Secretary who was removed from the services though the D.D.O. had passed the order to reinstate. Secondly he introduced octroi duty inspite of the fact that the same was stayed by the Dist. Panchayat and thereby flouted the order passed by the higher authority. In this regard it has been held that the impact of both the wrongs was distinct and separate qua the office held by the petitioner of that case as member. The disobedience with regard to the said two orders fell within the realm of his executive power which he had as the Chairman of the Nagar Panchayat. It did not fall within the realm of the duties or functions which he was required to perform as a member. An ordinary member has hardly any thing to do with the implementation of the stay order issued by the Dist. Panchayat. He has nothing to do with the order of re-instatement. It was then held that the disobedience was in the capacity of the Chairman as he could not have done so as a member of the Nagar Panchayat. For such reason the petition was partly allowed and the order so far as it related to the removal from the membership was quashed and it was confirmed so far as it was relating to the removal from the Chairmanship.

14. A perusal of this decision makes it clear that if the capacity in which the wrong amounting to misconduct or misuse of the office done, is divisible or separable and can distinctly be made clear in which capacity it relates to, the person enjoying two offices can be removed from that office relating to which the wrong is found to have been done. It impliedly makes it clear that the capacity in which the wrong done is distinctly indivisible, & indistinguishable; or wrong done falls within the realm of more than one offices held, the person can be removed from all the offices he is enjoying, inclusive of the basic or primary office also so that the wrong-doer - the elected member may not go on committing likewise wrong in his basic or primary

capacity and feather his nest damaging the interest of the Panchayat virtually decaying and corroding public weal, public administration and public properties; and laying the Panchayat to waste. If the commission of the wrong is likely to be continued in another capacity, the person holding the office in another capacity can also be removed exercising the powers flowing from one or another provision of the Act applicable.

15. The capacity, in which the alleged wrongs are done, is not capable to be separated or split up clearly and distinctly. Here, in this case reading the orders in question it appears that the petitioner had written chits for permitting the above referred companies or the persons to bring their goods into the local limits without payment of octroi duty, and one of such chits being at Page No. 117 of the record was, as submitted by Mr. Bukhari, the learned A.G.P., written by the petitioner not making it clear the capacity in which it was written, and so it can also be assumed that the same was written in the capacity of the member. When that is so, the action of the competent authority in removing the petitioner from the membership cannot be held to be bad or contrary to the provisions of the Act. Apart from such facts, the petitioner before this Court was in a position to influence the octroi clerks or dominate them in both the capacities. It should hardly be stated that now-a-days amongst the members of the staff it is not unknown that ordinary member also though not holding any office in Panchayat can at times do or undo any thing either bargaining with office bearers, or by pressurising tactics resorting to different devices, and can play the deuce with their careers, and if he is pleased or obliged, he would, going to any extent, help them achieve their goals, or would come to their rescue in case of difficulty. The wrongs done are therefore not only indivisible or indistinguishable but are of such a nature that the same can also be done in another capacity namely primary or basic. The petitioner therefore cannot be allowed to repeat the wrongs and gain in another capacity, driving him out from one office, but retaining him in another office. In view of such distinctive fact the decision cited cannot help the petitioner. The Dist. Development Officer is therefore perfectly right in removing the petitioner from his bedrock position, viz: membership, when he found that the wrongs were referable to the office of member also. Further the ordinary member if intermeddles & acts injurious to the Panchayat's interest, or defrauds the Panchayat certainly the same amounting to misconduct, he can be removed as such though he might be enjoying the post of a Sarpanch

or Upa-Sarpanch in the Panchayat. In view of such distinctive features, the decision in the case of Akbarali Kasamali Ravjani (Supra) will not also help the petitioner.

16. Faced with such situation, Mr. Majmudar, the petitioner's learned advocate submits that in that case also the order cannot be maintained because notice as to why he should not be removed as the member is not given to the petitioner, and thus there is a violation of the rules of natural justice. No doubt, it is true that if notice, specifically mentioning as to why he should not be removed from the particular office out of two or more he is enjoying, is not given to the concerned member, the rules of natural justice can be said to have been violated as in that case it will be difficult for the concerned person to distinguish one from the other and know from which office he is sought to be removed, what case he has to meet with, and what defence he can in law take ? In that case proper and reasonable opportunity cannot be said to have been given, and on that count the order can be quashed. As the notice received or copy thereof being not on record, I called upon petitioner's learned advocate to produce the same so as to know the type of notice given, but no notice was produced even on the next day. As rightly submitted by Mr. Bukhari, the learned A.G.P., that it can in such circumstances be assumed that the Dist. Development Officer also gave the notice calling upon the petitioner to show cause as to why he should not be removed from his office of the member. Consequently it cannot be held that the impugned orders are bad in law being contrary to the rules of natural justice. The contention therefore gains no ground to stand upon.

17. Whether in lieu of the octroi duty the person can be asked to pay development charge and bring the goods within the local limits of a Local Body is the question that arises for consideration. On query, the learned advocates for the parties on the first day failed to point out under which provision of law or rules the development charges were collected, and on the next day of hearing they fairly conceded that there was no statutory provision or rule authorising the Panchayat to collect development charges in lieu of octroi duty. It is well settled that when the local body or the Government wants to charge or levy the taxes, charges or duty, it is required to exercise the powers under the provision of any of the Acts or laws or Rules in force, and must show from which provision the authority to levy tax or duty flows in its favour. If no express provision

authorising the local body to levy the amount of tax or charges or duty under any other head, in lieu of octroi duty is there, in any Act or Law or Rules applicable, levy of development charge would be arbitrary, unauthorised and illegal. For such view the decision rendered by the Apex Court in Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla - AIR 1992 SC 2038, a good guide, may be referred to. Neither in the Act nor in the Rules or Regulations framed under the Act there is a provision authorising the Panchayat to levy development charge in lieu of octroi duty. In this case, when the development charges are nevertheless being levied without any statutory provision or the rules or regulations framed thereunder being in force, the levy of development charge, in lieu of octroi duty leviable is arbitrary, unauthorised and illegal. When a device running counter to the law under the guise of the development charge is found out so as to be illegally or unjustly helpful to the persons bringing the goods within the local limits evading or intending to evade the octroi duty, and in turn to gain either in cash or kind, it is certainly misuse of one's own office prejudicial to the interest of the local body and that amounts to fraud as well as misconduct. In order to curb such arbitrary and fraudulent act, injurious to the Panchayat; and promote larger good the competent authority can be said to be perfectly right in passing the impugned order.

18. After seeking further hearing, my attention is drawn to Sec. 201 of the Act which provides for lump-sum contribution by factories in lieu of taxes levied by the Panchayats, so as to justify the act of levying development charges in lieu of octroi duty. It may be stated that lame attempt is made on behalf of the petitioner so as to have the order of his choice. Sec. 201 in no case will apply to the case on hand. Whenever a factory within the local limits of the Panchayat subject to any rates that may be made under the Act, agrees to provide, all or any of the amenities which the Panchayat provides or has to provide in the area, where the factory is situated, called factory-area, for and on behalf of the Panchayat, it is under the Section permissible to the Panchayat to fix lump-sum contribution by the factory in lieu of taxes levied by the Panchayat; and in this regard if no agreement is reached the matter may be referred to the State Govt. for just decision working out viable solution.

19. The purpose of this provision is to see that the tax collection can be made easy & smooth, there may not be any scope for any scam, mischief, hardship or

problem, the result of presentiment, and both the factories and Panchayat can easily, minimising the labour, and with necessary facilitation, manage their affairs alleviating or totally removing procedural formalities, expenses, impediments, injury, loss, waste, wrong or hostile forces, and promote common-good, and not for evasion of tax or duty levied by the Panchayat or causing loss to the Panchayat under any guise, trick, ploy or ruse. The benefit of lump-sum contribution in lieu of tax or duty is made available to the factories in the village limits in consideration of the task of providing amenities in the factory area which the Panchayat otherwise provides or has to provide, is undertaken by the factories, and actually provide, and thereby lessen the burden of the panchayat. In short the Sec. 201 of the Act is for collection of taxes to the full fixing contribution keeping in mind the amenities being provided by the factories in factory area and promote the common-good and satisfy people's necessities for community life. The same in no way empowers the Panchayat or its member to levy development charge and forgo octroi duty or permit the persons or companies to evade tax or duty. The contention, advanced on behalf of the petitioner that development charge if collected so as to forgo octroi or reduce the octroi may be in view of Sec. 201 held to be valid must fail.

20. The impugned orders, when perused, it appears that several times the petitioner poked his nose into the levy of octroi duty and misusing his office of the member also he tried to overawe the Octroi Clerk so as to abstain from levying the octroi duty and permit the concerned companies or persons to bring their goods within the local limits of the Panchayat. He thereby defrauded the Panchayat and caused heavy financial loss which could not with certainty be assessed for want of sufficient particulars, materials & statistical data on record, but in one case it could be, because of the cogent evidence being there on record. The Cargo Motors had brought its goods on 10th February 1996 and 11th February 1996 to the tune of Rs. 17,55,526.40 ps. within the local limits of the Panchayat without making payment of octroi duty, and it is because of unjust & treacherous favour to the company, and butting in of the present petitioner qua levy of octroi duty. The Panchayat, therefore, sustained above mentioned loss of Rs. 35,110.50 ps. Consequently, the Taluka Panchayat sustained the loss of 10% thereof and the District Panchayat 15% thereof. It is also clear from the materials on record, that because of petitioner's intermeddling with levy of octroi duty by unauthorised

direction & goading to which some of the staff members had succumbed, the Conwest Company paid development charges of Rs. 400/= and in turn brought into the local limits of the Panchayat, the goods, the octroi duty of which was, in proportion, very high.

21. In democracy larger good and maintenance of rule of law as well as constitutional machinery must always be on the front burner. The same must be cherished and promoted at any cost. Hence to have and maintain healthy commendable and ideal regime, the forces fanning the fire of downfall or ruination must be mercilessly curbed and made disabled grasping the nettle. Those holding the office or post after being elected or appointed, direct or influence or command the subordinates or others whose duty is to implement the policy, scheme, projects, plans, or collect revenue or maintain law & order, or run the administration, or discharge the duties at whatever level in the administration in accordance with Law & Rules or Regulations for the larger good, to do or omit to do a particular official act contrary to Law or Rules or Regulation applicable, having adverse or shattering or detrimental or negative or paralytic effect/impact on aforesaid implementation, maintenance, collection, performance or administration as well as governance, leading to or likely to lead sooner or later to break-down of constitutional machinery or administration, schemes, projects, policies, plans, law & order etc mentioned above, ultimately shooting up plights, miseries & woes of the people and breeding depredations rather than eradicating the same, have therefore no right to be in the office/post, they must be dethroned, cashiered or expelled from the office/post they are holding along with those helping them. To ask or direct the staff not to levy tax or duty or fees or levy negligible sum or duty resorting to any device, amounts to, not only fraud on Panchayat but also paralysing or throttling the inflow of revenue which gradually lead to breakdown of constitutional machinery, administration, financial power the back-bone of the local body as a result different schemes, plans, policies etc., for the larger good would be shattered multiplying tragedies, miseries, plights of the people at large and thereby seriously impairing the right to life guaranteed vide Art. 21 of the Constitution of India. The petitioner has by directing as aforesaid qua levy of octroi duty amounting to fraud also, caused serious loss to the revenue, the back-bone of the Panchayat having the effect of break-down of constitutional machinery, administration, schemes, projects etc., of the Panchayat, consequent upon which welfare, upliftment, and prosperity of the village people

as well as socially & economically inequal people will remain a dream and peoples' plight, miseries & woes will be increasing and knowing no bounds. The petitioner has as discussed above with the intention of defrauding the Panchayat abetted the introduction of goods without levy of octroi duty and have unlawful enrichment. The Dist. Development Officer has therefore rightly passed the order so as to nip the pernicious and pathetic situation taking shape because of petitioner's damaging & defrauding activities & venture, in the bud. The contention that such harsh order ought not to have been passed must therefore fail.

22. Admittedly, no rule or provision of law governing the levy of octroi duty vests any member or authority of the Panchayat, much less the petitioner, with any authority or power to grant concession or forgo the octroi duty. If the elected Member or the office bearer of the Local Body against the provision of law, Rules or his authority or power or beyond his authority intermeddles in the administration of the Local Body and thereby defrauds the Panchayat and causes loss misusing his office, should he be directed to make the loss good, to the Panchayat, is the crucial question that now arises for consideration. The learned advocate representing the petitioner submits on query that it will not be within the competence of this Court, though exercising the power under Article 226 of the Constitution, to pass any order making the loss good because exact loss is required to be determined for which the Panchayat has to, file the suit, prove its case and get a decree. Further, the Panchayat is not the party to the present petition and has not prayed in this proceeding for necessary direction against the petitioner to pay the amount of loss it has sustained. Against such submission, Mr. Bukhari, the learned AGP vehemently contends, that if the loss is caused by fraud or misconduct of a member of the Panchayat, he can be directed to make the loss good paying the sum back with penalty and interest, and that would be within the competence of this Court to pass such order under Article 226 of the Constitution. He, going a step further, submits that in deserving cases the Court may pass the order disqualifying the member to contest any election either of a Local Body, Parliament, Vidhan Sabha, or Governing Body of any Bank, Co-operative Society or any Association & Institution and the like forever so as to maintain and safeguard the democratic values, national interest, boost common good and promote prosperity of the people & Nation, and prevent budding of frauds, evils, scams, mobocracy and anarchy leading in

the long run to devastation.

23. If the loss can be ascertained from the materials on record, without necessitating further investigation as well as proof to be brought on record adducing evidence, the local body cannot be directed to file a suit in the Civil Court and establish its case and have a decree, but in that case exercising the powers for just decision appropriate order under Article 226 can be passed against the party found to be the wrong-doer, because powers of this Court under the Article are very wide and for imparting real justice and to curb the wrong noted any appropriate order can be passed because the words "and for any other purpose" appearing in Art. 226 have very wide amplitude. The High Court also cannot overlook the changes degrading & defiling moral standard & ethic coming into being gnawing at and nibbling out public administration, public exchequer and national economy as well as larger good ultimately leading to anarchy & jungle law. On one side frauds, scams, scandals and unlawful enrichment and corruptions as well as misuse of office or powers are, as rightly submitted by the learned advocate Mr. Bharat Patel, going berserk; while on the other side plights, miseries and woes of the common men are monstrosly going bad to worse as a result of which gap between haves & have nots is disquietingly & horribly widening to its nadir. The Court in such gruesome, disheartening and deteriorating state cannot overlook its constitutional duty. It has to glower and unflinchingly pass appropriate order, may be harsh, but fit & deserving in the circumstances so as to achieve the objects of the Constitution which the framers of the Constitution intended to be realised, and curb evils rather than twiddling its thumbs, because the powers under Art. 226 are very wide, and the High Court is not made helpless or crippled.

24. With regard to such contentions, it may also be stated that, the duty of the elected Member of the Local Body is not to act in a manner injurious or in detriment to the interest of and functional efficiency of the Local Body, but should all the while act or omit to do an act, which would help the local body function well in accordance with law without any obstruction, meddling or damage, and boost the Local Body achieve the well-being of the people and secure and levy the revenue it is authorized to levy under the law. The elected Member of the Local Body must always be conscious about and ruminate on the fact that his duty after being elected is to account to the people and satisfy that he sincerely and zealously without leaving any stone unturned, tries

to enhance their well-being even sacrificing his own and acts to promote the object and policies of the Panchayat, and transparency in public life. He should never cause a loss by reaping off and making the local body a stubbled, and unlawfully garner money in his coffer & vault and gloat considering the Local Body to be his commercial unit or a proprietary firm. In view of such expectancy of the member, when a fraud, or misconduct, or misuse of office is noted on the part of the member, and if I do not lift a finger to such wrong and pass any appropriate order to make the loss good, and check unlawful enrichment, I will be failing in my duty. Further, for want of money or as the Panchayat sustains monetary loss because of the fraud or misconduct on the part of the member of the Panchayat, the prospects, plans & schemes for the betterment of the people will be paralysed or stagnated and being stranded, the Panchayat would be helpless in implementing its plans, projects or schemes for the well-being of the people and the poor or socially & economically inequal people in the villages will be deprived of their benefits of the welfare schemes to be or being launched by the Panchayat, or by Government through Panchayats as a result of which such people will be deprived of their due benefits for their sustenance, prosperities & betterment, and their miseries & woes will not be eradicated but would be mounting up consequent upon which their right to life is also impaired or adversely affected. For this reason, the Court cannot remain a silent spectator, the order for making the loss good, though appearing harsh but necessary for larger good, should ordinarily be exercising powers, passed against the elected member who setting at naught his duties defrauds the local body. What should be borne in mind may also be stated.

25. Thus the High Court is no doubt vested with wide powers to do complete justice, but the powers under Art.226 can be exercised by the High Court for making the loss good to the Panchayat if there is no specific remediable provision in any Law or Act & Rules applicable in force and the party sustaining injustice is left in the lurch or likely to be left in the lurch, and further sufficient materials requiring no further inquiry are there on record. If there is a specific provision for remedying the wrong done, the High Court has to direct the concerned authority to exercise its powers for making the loss good undergoing required procedural formalities and pass appropriate order and see that the specific provision is strictly followed. In spite of the specific remediable provision being there in Law or Act or Rules applicable, if the High Court prefers to pass appropriate order, it would be improper, unjust and unconstitutional,

as in that case the High Court will be usurping the powers of that authority which is not at all in consonance with constitutional spirit & commands, and further it would defeat the specific provision. For directing the wrong-doer to make the loss good to the Panchayat there is a specific provision in the Act, in accordance with which concerned authorised officer has to pass the order. The relevant provision, vide Section 267 of the Act may be quoted:-

"267. (1) Every member of a panchayat or its Committee shall be personally liable for the loss, waste, or misapplication of any money or other property of panchayat to which he has been party, or which has been caused or facilitated by his misconduct or gross neglect of his duty as a member.

(2) If after giving the member concerned a reasonable opportunity for showing cause to the contrary, an officer authorised by the State Government is satisfied that the loss, waste or misapplication of any money or other property of the panchayat is a direct consequence of misconduct or gross negligence on his part the officer so authorised shall by an order in writing, direct such member to pay to the panchayat before a fixed date, the amount required to be reimbursed to it for such loss, waste or mis-application.

(3) If the amount is not so paid, it shall be recovered as an arrear of land revenue and credited to the fund of the relevant panchayat.

(4) Any person aggrieved by the decision or action of the officer so authorised may apply to the District Court as provided in sub-section (6) of section 121, within the like time for redress of his grievance and that court may pass any order thereon which it can pass under that sub-section."

The petitioner has as discussed hereinabove by defrauding caused monetary loss to the Panchayat. Except in one case referred hereinabove, the actual loss caused in other cases is to be investigated and ascertained, undergoing the procedure provided in the Section 267. In view of the matter the concerned authorised officer has

now to initiate the action and pass appropriate order against petitioner for making the loss good to the Panchayat. Under the circumstances, the High Court though enjoying wide powers cannot direct the petitioner to deposit the amounts in Panchayat so as to make the loss good. The High Court can exercise the powers if the concerned authority passes unjust, or improper, or infructuous, or indiscreet, or token order.

26. In this case, regarding certain instances when the goods were brought into the local limits without payment of octroi duty owing to unjust favour from the petitioner, assessment of duty could not be made, but as stated above in one case, it could with certainty be assessed at Rs. 35,110.50 ps. About this certain assessment, no case refuting the same has been put forth before the D.D.O., and on query the learned advocate for the petitioner has no comment to offer. Although such assessment with certainty can be made because uncontroverted facts are available on record at present before this Court, the petitioner cannot, in view of the above discussion, be directed to make the loss good along with the interest, though Panchayat may not be the party and may not have prayed for the same. The authorised officer under Sec. 267 of the Act will certainly safeguard the public exchequer & common-good and will not let loose the petitioner, the wrongdoer.

27. Above discussed facts reveals that the petitioner has not only done the civil wrong, but the criminal wrong also. He has by his above referred acts caused and abetted the introduction of goods within octroi limits of the Panchayat upon which the payment of octroi dues have neither been made nor tendered. He has thereby, it seems, committed the offence punishable under Sec. 216 of the Act, for which he is liable to be put to trial.

28. About disqualifying the member to contest the election again, Sec. 30 of the Act is the specific provision; and so order as canvassed in that regard for the aforesaid reasons cannot be passed. In that regard, the competent authority may if deemed fit pass appropriate order invoking the said provision or any other applicable provision in the Act and undergoing required formalities.

29. For the foregoing reasons, it is clear that the petitioner, acted beyond his authority which amounts to fraud on the Panchayat and consequently the misconduct within the meaning of Section 57 of the Act, and caused monetary loss to the Panchayat. The impugned orders are

quite in consonance with the law and the provisions of Section 57 of the Act. There is therefore no justifiable reason to upset the same exercising the powers under Article 226 of the Constitution. The application, being devoid of merits, is required to be dismissed with the direction to hold as hereinabove discussed an inquiry (u/s. 267 of the Act) for assessing the loss and recovery of the amounts for making the loss good, qua civil wrong, and initiate appropriate action qua criminal wrong.

30. In the result, the application is hereby dismissed with costs. Without being loath, the authorised officer shall at his earliest initiate the proceeding under Sec. 267 of the Act and pass appropriate order to make the loss good to the Panchayat undergoing necessary procedural formalities and affording the petitioner the reasonable opportunity to submit. He shall also see that appropriate action is taken against the petitioner & other wrong-doers invoking Sec. 216 of the Act, subject to the provisions of other laws or Code applicable. Rule is discharged.

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